

EXHIBIT H

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Sue Ghorayeb, Official Court Reporter

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA

v.

07 CR. 1027 (GAY)

BERNARD B. KERIK,

Defendant.

U.S. Courthouse
White Plains, N.Y.
November 9, 2007
1:00 p.m.

Pretrial Conference Before: HON. STEPHEN C. ROBINSON,
United States Magistrate Judge

APPEARANCES

MICHAEL J. GARCIA
United States Attorney for the
Southern District of New York
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White Plains, N.Y. 10601
BY: PERRY CARBONE
ELLIOTT JACOBSON
Assistant United States Attorney

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Official Court Reporter

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2 going around.

3 There is, there is one matter I wanted to call to
4 both the Court's attention and to counsel's attention. I
5 know that Mr. Breen just received a copy of the Indictment
6 this morning. I know he has had an opportunity to read it
7 and go over it with his client.

8 I do not know if he has noticed, but I do call to
9 his attention and to yours the fact that venue in Count 15
10 and 16, which are false statement counts, is laid in the
11 District of Columbia. It's our reading of the law of this
12 Circuit that venue is a personal defense that can be waived
13 by a defendant. And we are putting it to Mr. Breen and his
14 client -- and obviously we don't expect an answer this
15 morning, but I just wanted to flag the issue -- we are
16 putting it to them as to whether they wish to waive venue on
17 those counts.

18 THE COURT: Only if you would imagine they would
19 rather appear before another judge than me.

20 MR. JACOBSON: Well, I can't imagine they would.

21 The downside to not waiving venue, in addition to
22 being in front of another judge, would be that the Government
23 would be constrained to dismiss these counts prior to trial,
24 and then we would seek to bring these charges before a grand
25 jury sitting in the District of Columbia and seek an

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1 Indictment there. In which case, assuming that happened, Mr.
2 Kerik would be facing two separate trials, which I gather or
3 I would assume -- well, it's up to him, but I would assume
4 it's something he would not wish to do.

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5 I would say that the false statements that are
6 alleged in those counts are of a piece with the other false
7 statements that are otherwise alleged where venue is laid in
8 the Southern District of New York.

9 So, it's a matter I just wanted to flag for the
10 Court's attention, because this is a matter that's going to
11 have to be resolved with some dispatch.

12 THE COURT: That's what I was going to ask you, Mr.
13 Jacobson. Is there a time line within which you would need a
14 response from defense counsel with respect to that?

15 MR. JACOBSON: Well, we can certainly provide
16 counsel, on very expedited basis, the actual false statements
17 that are at issue, and we would ask for a decision within two
18 or three weeks. Because if his decision is that he doesn't
19 want to go forward, then we would need to do what we need to
20 do to go before the grand jury in the District of Columbia.
21 That involves our being sworn in as Special Assistants there.
22 There is certain administrative procedures that we have to go
23 through and we would have to present the evidence to them,
24 and we would want to do that with all due dispatch.

25 THE COURT: Okay. So, Mr. Breen, you have

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♀ 1 obviously heard that.

2 Maybe one of the things that the Government might
3 want to think about doing is producing the discovery with
4 respect to those counts ahead of everything else.

5 MR. JACOBSON: We will. We will endeavor to do
6 that as soon as, as soon as we can.

7 THE COURT: And then if you can get back, both to
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